

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7605

BILL NUMBER: HB 1842

NOTE PREPARED: Mar 4, 2003

BILL AMENDED: Feb 25, 2003

SUBJECT: Tobacco Product Manufacturer Regulation.

FIRST AUTHOR: Rep. Mahern

FIRST SPONSOR: Sen. Clark

BILL STATUS: As Passed - House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill requires a tobacco product manufacturer to:

- (1) certify that it is a participating manufacturer in the Tobacco Master Settlement Agreement or maintains a qualified escrow fund;
- (2) list the manufacturer's brand families of cigarettes.

The bill requires the Attorney General to electronically publish a directory of tobacco product manufacturers and brand families. The bill requires a foreign nonparticipating manufacturer to appoint an agent for service of process. It also provides that the Department of State Revenue may: (1) revoke or suspend the license of; and (2) impose a civil penalty on; a distributor or stamping agent that affixes a stamp on or sells cigarettes of a manufacturer or brand family that is not listed in the directory.

The bill allows the state to recover the costs of an action to enforce the certification requirements.

Effective Date: July 1, 2003.

Explanation of State Expenditures: (Revised) *Attorney General's Office:* The bill requires the Attorney General to maintain an annual listing of cigarette manufacturers who are in compliance with state law and are either participants in the Master Settlement Agreement or make the required deposits into a qualified escrow account. The Attorney General would be required to publish the first listing no later than October 1, 2003. The bill requires that the listing be made public on the Access Indiana website. The bill also allows the Attorney General to establish rules to assist with the enforcement of cigarette manufactures' compliance with state law requiring them to either participate in the Master Settlement Agreement or contribute to a qualified escrow account. It is estimated that the Office could cover any costs associated with the bill's provisions using existing staff and resources. Additionally, some of the Office's costs may be offset through fees recovered from persons violating the bill's provisions. The Attorney General's Tobacco Litigation

Division consists of two attorneys and a paralegal. The Division's operating budget is approximately \$200,000 each year.

Department of State Revenue: This bill could require the Department to develop rules and procedures to assist with the enforcement of tobacco manufactures' compliance with certain provisions. It is presumed that the Department can absorb any costs associated with the bill.

Explanation of State Revenues: *Penalty Provisions:* The bill prohibits the sale of cigarettes from manufacturers not included on the Attorney General's listing of compliant manufactures. The Department of State Revenue may impose a civil penalty of up to 500% of the retail value of cigarettes sold or \$5,000 of reach violation of this provision. A person who violates this provision also commits a deceptive act actionable by the Attorney General. If convicted, the court may order the sender to pay to the state the reasonable costs of the Attorney General's investigation and prosecution related to the action. A court may also order an injunction. If the injunction is violated, a civil penalty of up to \$15,000 may be assessed per violation. If a court finds that a person committed a deceptive act knowingly, the Attorney General may recover a civil penalty of a fine up to \$500 per violation on behalf of the state.

This bill makes it a Class C misdemeanor to affix a cigarette tax stamp to a pack of cigarettes that is not listed in the Attorney General's directory of cigarette manufacturers and brand families. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C misdemeanor is \$500. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

The bill provides that a court must order any profits, gain, gross receipts, or other benefit generated from a violation of the bill's provisions must be deposited in the Indiana Tobacco Master Settlement Account.

Explanation of Local Expenditures: *Penalty Provision:* A Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Attorney General; Department of State Revenue.

Local Agencies Affected: Marion County circuit courts, local law enforcement agencies.

Information Sources: National Association of Attorneys General; Jennifer Thuma, Legislative Liaison, Attorney General's Office, 233-6143.

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